

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 ROBERT L EVANS,

11 Plaintiff,

v.

12 FRANCISCAN HEALTH SYSTEM,

13 Defendant.

CASE NO. C13-5909 RBL

ORDER ON DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT [DKT. #19]

14 THIS MATTER is before the Court on Defendant Franciscan's Motion for Summary

15 Judgment [Dkt. #19]. Plaintiff Evans was a 67 year old Franciscan nocturnist when he was

16 terminated. He claims he was terminated due to his age. Franciscan claims it fired Evans

17 because he had remarkably, demonstrably, poor interpersonal skills, and was the subject of

18 repeated, documented patient, staff and doctor complaints. It claims that he was counseled on his

19 demeanor, warned of the consequences of its continuation, and refused to change his ways.

20 Evans claims that the articulated basis for his termination was pretextual, and that the evidence

21 supports at least the inference that his firing was actually motivated by his age.

22 The facts are not entirely disputed, but the parties see their implications quite differently.

23 Evans claims that he was fired only after he changed his mind about retiring, and that his

1 demeanor was never an issue until he was old. He emphasizes that summary judgment is
 2 “disfavored” in age discrimination cases.

3 Franciscan claims that Evans’s ADEA discrimination claim requires him to demonstrate
 4 that he was performing his job satisfactorily and that he was replaced by a younger doctor when
 5 he was terminated:

6 In order to establish a disparate-treatment claim under the ADEA a plaintiff must
 7 prove that age was the “but-for” cause of the employer’s adverse decision. *Knodel v.*
Providence Health and Services, 2011 WL 3563912 at * 6 (W.D. Wash. Aug. 15,
 8 2011) (citing *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009)).

9 To establish a prima facie case of discrimination Evans must show that he was “(1) a
 10 member of the protected class (at least age 40); (2) performing [his] job satisfactorily;
 11 (3) discharged; and (4) replaced by substantially younger employees with equal or
 12 inferior qualifications.” *Adam v. Kempthorne*, 292 Fed.Appx. 646, 650 (9th Cir.
 13 2008).

14 [Dkt. #19 at 13]. Evans does not seriously dispute that he is required to demonstrate these and
 15 other elements to survive summary judgment, and to prevail at trial. The second and fourth
 16 elements are at issue here.

17 Whether Evans was satisfactorily performing his job is a question of fact that this Court
 18 cannot resolve on summary judgment, even though it is clear that Franciscan can introduce ample
 19 evidence strongly suggesting that he was not.

20 The other question is (if possible) even closer. Franciscan claims that Evans cannot
 21 demonstrate that his position was filled by a younger doctor. Evans does not actually respond to this
 22 claim, emphasizing instead that he was the oldest of Franciscan’s 125 doctors and that his
 23 termination came after a discussion of his retirement (a conversation that Franciscan claims, and
 24 demonstrates, Evans initiated). Evans’ “evidence” that he was “replaced” by a younger doctor is
 25 entirely inferential, and it is mighty thin. The jury will be instructed that Evans has to prove this
 26 element of his claim, and if there is no further evidence of it, it may be subject to directed verdict.

1 Nevertheless, it cannot be said as a matter of law that the position was not effectively filled, or that it
2 was not filled with a younger doctor. Franciscan's Motion for Summary Judgment on Evans' ADEA
3 claim is DENIED.

4 The evidence supporting Evans' retaliatory discharge claim is (if possible) thinner yet. But it
5 is largely the same as the evidence in support of his age discrimination claim, and Franciscan's
6 Motion for Summary Judgment on this claim is DENIED.

7 Evans' claim that Franciscan failed to provide the documents required under Chapter 49.12
8 RCW is unsupportable as a matter of law, and Franciscan's Motion for Summary Judgment on this
9 claim is GRANTED.

10 IT IS SO ORDERED.

11 Dated this 13th day of January, 2015.
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13 RONALD B. LEIGHTON
14 UNITED STATES DISTRICT JUDGE
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